

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.445 OF 1995

Nasik Zilla Maratha Vidya Prasarak Samaj ... Petitioner

V/s.

Yeshwanth Ukha Borse & Ors.

... Respondents

Mr.K.Y. Mandlik for Petitioner

Ms.Kumud Bhatia for Respondent No.1

Mr.A.P. Vanarse, AGP, for Respondent Nos.5 to 7

CORAM: SMT.NISHITA MHATRE, J.

DATED: SEPTEMBER 6, 2007

ORAL JUDGMENT:

. The petitioner challenges the order of the School Tribunal dated 12.12.1994. By this order, the School Tribunal had directed the petitioner to reinstate the appellant i.e., Respondent No.1 herein, as a Headmaster and to give him all benefits attached to the post with backwages from 1.9.1992. The main grievance of the petitioner is that Respondent No.1 was not employed in the school which the petitioner society took over and, therefore, there is no question of reinstating him in its service.

2. Respondent No.1 was appointed as a Headmaster of the school known as Indira Madhyamik Vidyalaya, Vasol i.e., Respondent No.3 herein. A resolution was passed to appoint him on a permanent basis from 17.9.1985. It

appears that Sarva Dharma Samabhav Samaj Vikas Mandal, Respondent No.2 herein, was running the Indira Madhyamik Vidyalay, Respondent No.3. After the confirmation of the first Respondent's services with Respondent No.3 school, the petitioner took over Respondent No.3 school. He continued as a headmaster till 1987. According to the petitioner, Respondent No.1 abandoned his services as a headmaster due to which one Smt.Madhuri Manohar Chandratre was working as Incharge Headmaster. On 15.6.1988 one B.D. Savkar was appointed as Headmaster and he continued as such till December 1990. B.D. Savkar met with a fatal accident after which K.N. Deore, Respondent No.4 herein, was appointed as a Headmaster. The appointment order dated 1.2.1991 was issued appointing K.N. Deore as the headmaster. His appointment was approved by the Education Officer on 22.12.1990. Respondent NO.4 continues to be the Headmaster till today.

3. Respondent No.2 was unable to manage the financial affairs of the school. It therefore sought permission from the Charity Commissioner to permit the petitioner to take over the running of Respondent No.3 school. The proposal submitted to the Charity Commissioner included a list of the employees who were then on the rolls of the school and whose services the Petitioner had agreed to take over. This list was

signed by the President of Respondent No.2 and the Headmaster i.e., Respondent No.4. The Charity Commissioner by his order dated 10.10.1991 sanctioned the transfer. Respondent No.6 i.e., the Education Officer granted the proposal submitted by the petitioners and Respondent No.2 to transfer the employees of the school to Respondent NO.2 on condition that all teachers and non-teaching staff in employment in the year i.e., 1990-1991 whose names figured in the list submitted with the proposal were transferred to the petitioner. This list did not bear the name of Respondent No.1.

4. On 22.10.1992, Respondent NO.1 filed an appeal before the school tribunal alleging that his services had been wrongly terminated as a headmaster on 16.4.1989. This claim of Respondent No.1 was supported by the President of Respondent No.2.

5. In its reply to the appeal, the petitioner indicated that the services of Respondent No.1 had not been transferred to it since his name was not on the list of employees in 1991 when the transfer of the school was effected. The petitioner also contended that the appeal was filed after an inordinate delay. On 11.2.1994 the Tribunal condoned the delay and held that Respondent No.1 was entitled to reinstatement with full

backwages from 1.9.1992. Aggrieved by this order, the petitioner preferred Writ Petition No.240 of 1999 which was allowed and the appeal was remanded to the School Tribunal for hearing it afresh.

6. On remand, the Tribunal by its order dated 12.12.1994 has held that Respondent No.1 was entitled to reinstatement as a headmaster with continuity of service as well as backwages from 1.9.1990. The Tribunal came to the conclusion that there were two schools of the same name Indira Madhyamik Vidyalay, run in Vasol; one run by Respondent No.2 and the other run by one Adarsh Gram Seva Samiti, Girnare. The Tribunal has held that Madhuri Manohar Chandratre was appointed temporarily as headmistress because Respondent No.1 was on leave between 3.1.987 to 14.6.1987. The Tribunal then accepted the fact that from 15.6.1987 one Jadhav was appointed as the headmaster and thereafter from 15.6.1988 Savkar was appointed as a headmaster. The Tribunal held that these persons, Jadhav and Savkar were appointed headmasters in Indira Madhyamik Vidyalaya run by Adarsh Gram Seva Samiti, Girnare. The Tribunal held that the headmaster, Respondent No.1 had been terminated from service illegally by the petitioner and therefore, was entitled to reinstatement.

7. It is submitted on behalf of the petitioner that

the petitioner has taken over the services of each employee who was on the rolls of Indira Madhyamik Vidyalaya run by Respondent No.2 in the year 1991. Respondent No.1's name did not figure in the list of employees and, therefore, his services were not taken over by the Petitioner.

8. An affidavit is filed by the Education Officer. This affidavit deals with the issue as to whether there are two schools of the same name in Vasol. The Education Officer has denied the existence of two schools of the same name at Vasol. He has stated that Respondent No.1 was working as a headmaster with Respondent No.3 school from 17.9.1985 to 5.1.1987. In paragraphs 18 and 19 of the affidavit, the Education Officer has averred thus:

18. With reference to Para No.XXIV of the Petition, I state that taking into consideration the Inquiry report of Deputy Education Officer (Secondary), Zilla Parishad, Nasik and the School inspection report dated 17-11-1987, Mr.Y. Borase was not in the service of the Respondent No.3 i.e. Indira Madhyamik Vidyalaya, Vasol, Tal. Baglan. There was no other Indira Madhyamik Vidhyalaya run by Aadarsh Seva Sammittee, Girnare, Tal. Malegaon at Vasol, Tal. Baglan.

19. With reference to Para XXV of the Petition, I state that as per Inquiry Report of Deputy Education Officer, there were no two schools by name Indira Madhyamik Vidyalaya at Vasol run by two different institutions. There was only one School by name Indira Madhyamik Vidyalaya at

Vasol run by Serva Dharma Sambhav Samaj Vikas Mandal, Vasol with Financial Assistance of Aadarsh Gram Seva Sammittee, Girnare, Tal. Malegaon.

9. In view of these facts, the submission of the learned advocate for Respondent No.1 that there are two schools cannot be accepted. In fact I had requested the learned AGP to produce the inspection reports of the school Indira Madhyamik Vidyalay, Vasol and on considering these reports, I find that Respondent No.1 was not employed after 1987 as the headmaster of the school. The theory that there are two schools also cannot be accepted. Respondent No.1 was working in Indira Madhyamik Vidyalay Vasol from 1985 to 1987 as a headmaster. Thereafter, the Tribunal has noted that Madhuri Manohar Chandratre was appointed as Incharge headmistress when Respondent No.1 was on leave. She was succeeded by one P.D. Jadhav and thereafter by Savkar. If indeed Respondent No.1 was working in the school after 1987, he would have objected to the appointment of the aforesaid persons in his place. This obviously shows that Respondent No.1 had abandoned his service and had no interest in continuing in the post of headmaster. Respondent No.4 was appointed much later as a headmaster in the school. Respondent No.1 has while filing the appeal not challenged the appointment of Respondent No.4 as a headmaster. In these circumstances, the Tribunal

is clearly incorrect in deciding that Respondent No.1 should be appointed as headmaster w.e.f. 1992. The school had been taken over by the petitioner in the year 1991-1992 and admittedly all the person whose names figured in the list sent to Charity Commissioner had become employees of the Petitioner. In these circumstances, the order of the school tribunal must be set aside. The Tribunal was completely incorrect in observing that the Petitioner had "succeeding in fooling the High Court.....". When this Court has passed an order the School Tribunal had no business to comment on the order or on the reason for passing such an order. These observations of the Tribunal are wholly misplaced and hence are unsustainable.

10. The impugned order is therefore set aside. Rule made absolute accordingly. No order as to costs.